Filed 8/7/19 P. v. Salinas-Torres CA6

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>CHRISTIAN XAVIER SALINAS-TORRES,<br><br>Defendant and Appellant. | H045393<br>(Santa Clara County<br>Super. Ct. No. B1687371) |

Christian Xavier Salinas-Torres was sentenced to 18 years in state prison after pleading no contest to charges including first degree robbery in an inhabited dwelling, assault with a firearm, false imprisonment, and criminal threats. Salinas-Torres also admitted firearm use allegations. The charges arose from an incident in 2016 in which Salinas-Torres, in concert with two codefendants, robbed the victim in her home at gunpoint.

On appeal, Salinas-Torres contends that the trial court should have stayed his sentence for false imprisonment pursuant to Penal Code section 654,[1] because his restraint of the victim was part of an indivisible course of conduct comprising the robbery. Salinas-Torres also challenges the statutory basis for imposition of a 10-year, no-contact protective order at sentencing.

[1] Unspecified statutory references are to the Penal Code.

We agree with both contentions and will modify the judgment accordingly to stay punishment for the false imprisonment conviction and to strike the no-contact protective order. As modified, we will affirm the judgment

## I. FACTUAL AND PROCEDURAL BACKGROUND

### A. THE ROBBERY[2]

The victim lives in a two-story home in Mountain View. She returned home in the afternoon from running errands. She opened the garage and entered her kitchen through the side door leading from the garage. The garage remained open as she set groceries in the kitchen and checked on the puppy. She was about to go outside for more groceries when she heard a knock on the side door. She was surprised to see a man she did not know, later identified as Salinas-Torres, standing at the door to the kitchen. She stepped into the garage and told him that he had the wrong house and had to leave.

Salinas-Torres pulled a small, black gun from his right pocket. When the victim screamed, Salinas-Torres struck her on the head with the gun, and she fell against the door. Salinas-Torres warned her not to yell or he could kill her. He ordered her to give him her gold necklace, and she complied. A woman joined Salinas-Torres and accompanied him as he ordered the victim back inside the house, still at gunpoint. Salinas-Torres told the victim to give him her money and her jewelry. She gave him the cash in her wallet. He directed her upstairs and followed closely as she removed jewelry and family valuables from bedroom drawers. He threatened to shoot her "one or two" times during the ordeal.

After the victim gave him the jewelry from the bedroom, Salinas-Torres ordered her to go downstairs. They reached the closet beneath the stairs, and he ordered the victim inside. She ducked into the closet and crouched behind the hanging clothes.

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[2] Because Salinas-Torres pleaded no contest to the charges, we derive the facts from the victim's testimony at the preliminary hearing, and from the probation report.

Salinas-Torres closed the door. The victim thought she was going to be shot. She waited and listened for about 10 minutes before she came out. She did not see anyone so she rushed outside and called for help.

The victim sustained small lacerations to her scalp and sought medical attention. Police officers were able to track an electronic device that had been taken from the victim's bedroom to the area of a San Jose pawn shop. The officers surveilled the shopping center and conducted a high-risk traffic stop. Salinas-Torres and two female passengers were placed under arrest. A search of the vehicle revealed a loaded handgun in the driver's side door, as well as the victim's computer, iPad, jewelry, and other items.

### B. CHARGES

The Santa Clara County District Attorney charged Salinas-Torres by information filed in May 2017 with the following felonies: kidnapping to commit robbery (§ 209, subd. (b)(1); count 1), first degree robbery in an inhabited place while acting in concert (§§ 211, 213, subd. (a)(1)(A); count 2), assault with a firearm (§ 245, subd. (a)(2); count 3), false imprisonment (§§ 236, 237; count 4), criminal threats (§ 422; count 5), possession of a firearm by a felon (§ 29800, subd. (a)(1); count 6), possession of ammunition by a prohibited person (§ 30305, subd. (a)(1); count 7), felon carrying a loaded firearm on his person (§ 25850, subd. (a); count 8), and misdemeanor receiving stolen property with a value under $950 (§ 496, subd. (a); count 10).[3] The information alleged that Salinas-Torres personally used a firearm in the commission of counts 1 through 5 (§§ 12022.53, subd. (b), 12022.5, subd. (a)).

[3] Count 10 for receipt of stolen property did not pertain to the robbery but to other items found in Salinas-Torres's possession at the time of his arrest.

### C. PLEA AGREEMENT

Salinas-Torres entered an open plea in July 2017, in which he pleaded no contest to counts 2 through 10,[4] in exchange for the promised dismissal of count 1. He admitted the firearm use allegations attached to counts 2 through 5. The prosecution and defense disagreed about the maximum sentence that Salinas-Torres could receive under the plea. The defense calculated a 19-year maximum sentence, assuming application of the prohibition against multiple punishments under section 654 as to counts 3 through 10, and the prosecution calculated a 26 year four-month maximum sentence, assuming the imposition of consecutive sentences.

In a sentencing memorandum, defense counsel argued that the sentence for counts 3, 4, and 5 should be to be stayed pursuant to section 654, because those violations were directed toward the single objective of robbing the victim. The defense also argued that if the court found the act of directing the victim into the closet was for a separate objective of facilitating escape, the court should nevertheless sentence concurrently as to count 4 based on the factors set forth in California Rules of Court, rule 4.425. The defense filed numerous letters of support for Salinas-Torres from family and community members referencing his contributions in the community as a volunteer and his positive prospects for the future.

### D. SENTENCING

The trial court at sentencing stated that it had considered the arguments of counsel, Salinas-Torres's sincere remorse and the statements of his supporters, and the victim's statement of psychological trauma as a result of the robbery. The court found Salinas-Torres ineligible for probation under section 12022.53, subdivision (g), due to the

[4] Count 9 was charged only as to a codefendant; Salinas-Torres pleaded no contest to counts 2, 3, 4, 5, 6, 7, 8, and 10.

admission of the firearm use allegations.[5] The court also denied the defense's request to continue sentencing until January 2018, when Senate Bill No. 620 would become effective and would authorize the court, in its discretion, to strike the firearm use enhancement,[6] again citing the nature of the robbery and assault on the victim, and the victim's terror and belief that she was going to be killed.

The court imposed the midterm of six years as to count 2, first degree robbery in an inhabited place (§§ 211, 213, subd. (a)(1)(A)), plus 10 years consecutive for the firearm use enhancement (§ 12022.53, subd. (b)), for a total of 16 years on count 2. It found that count 3, assault with a firearm (§ 245, subd. (a)(2)), and count 5, criminal threats (§ 422), as well as the related firearm use enhancements, were subject to section 654 because they were "necessarily incidental to" and shared "the same intent and objective of the robbery and to carry out the robbery . . . ." The court thus imposed but stayed the midterm of three years as to count 3, plus the midterm of four years for the firearm use enhancement (§ 12022.5, subd. (a)), and imposed but stayed the midterm of two years as to count 5, plus the midterm of four years for the firearm use enhancement.

The trial court rejected the defense's argument that count 4, false imprisonment (§§ 236, 237) also was covered by section 654. It found that the false imprisonment "was conducted at the end of the robbery for a different intent, namely, to enable the escape." The court reasoned that the victim "was placed in the hall closet after the robbery had been completed throughout the house after [she] . . . was taken downstairs again by the

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[5] The trial court noted that even if the case were eligible for probation, the aggravating factors including seriousness of the crimes, use of a weapon, infliction of physical and emotional injury, and the fact that Salinas-Torres had an active role and was on probation at the time, outweighed the mitigating factors of relative youth, lack of a significant record of prior offenses, and abundant community support.

[6] Senate Bill No. 620, effective January 1, 2018, amended section 12022.53, subdivision (h) to authorize the court "in the interest of justice" at the time of sentencing to "strike or dismiss an enhancement otherwise required to be imposed . . . ." (Stats. 2017, ch. 682, § 2.)

defendant and codefendant and placed in the closet for purposes of facilitating the escape. [¶] That was a separate intent and also placed the victim under separate danger, and in fact, the victim said she thought when the door closed to the closet, she was going to be shot and killed and that that was the purpose of putting her in the closet."

Applying the factors under California Rules of Court, rule 4.425, the court found that a consecutive sentence was appropriate because placing the victim in the closet "was an additional crime and additional threat, additional danger to the victim." The court therefore imposed a consecutive sentence of eight months for count 4 (calculated as one-third the midterm of two years), plus one year and four months for the enhancement (calculated as one-third the midterm of four years), for an aggregate sentence of 18 years for counts 2, 3, 4, and 5.

Lastly, the trial court found that counts 6 and 7, possession of a firearm by a felon (§ 29800, subd. (a)(1)) and possession of ammunition by a prohibited person (§ 30305, subd. (a)(1)) were based on the same conduct as count 8, felon in possession of a loaded firearm (§ 25850, subd. (a)). The court imposed the midterm of two years as to count 8, concurrent to the sentence for count 2 based on the mitigating factors and the 10-year firearm use enhancement that was already imposed. It imposed but stayed the midterm of two years as to both counts 6 and 7. As to count 10, misdemeanor receipt of stolen property (§ 496, subd. (a)), the court imposed 30 days in jail, concurrent to the felony counts, and found the term satisfied by time served.

The trial court ordered general restitution, as the victim did not request victim restitution, and imposed statutory fines, assessments, and fees—none of which are at issue on appeal. Defense counsel raised no objections but submitted on the briefing and earlier discussion. The court ordered the tentative sentence final. The court also noted that there was a protective order in the case which would expire in June 2018. The court entered a new, 10-year protective order for "no contact with the victim in this case."

Salinas-Torres filed a timely notice of appeal, challenging only the sentence or other matters occurring after the plea that do not affect the validity of the plea. (Cal. Rules of Court, rule 8.304(b).)

## II. DISCUSSION

Salinas-Torres raises two issues on appeal. He argues that the consecutive sentence on count 4 should have been stayed pursuant to section 654 since the false imprisonment was based on the same course of conduct and had the same objective as the robbery. He also argues that the trial court erred in imposing the 10-year protective order without notice or legal basis. The Attorney General concedes that the protective order lacks an applicable statutory basis and should be stricken.

### A. SECTION 654 PRECLUDES MULTIPLE PUNISHMENTS FOR ROBBERY AND FALSE IMPRISONMENT IN THIS CASE

Section 654 states in relevant part: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." (§ 654, subd. (a).) The statute prohibits multiple punishment for a single act that violates different provisions of law (*People v. Jones* (2012) 54 Cal.4th 350, 358) as well as for multiple acts comprising an indivisible course of conduct incident to a single criminal objective and intent. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1208.) It is intended "to insure that a defendant's punishment [is] commensurate with his [or her] culpability." (*People v. Perez* (1979) 23 Cal.3d 545, 552.) It applies to substantive offenses as well as enhancements. (*People v. Buchanan* (2016) 248 Cal.App.4th 603, 615-617.)

Multiple crimes will constitute one act or omission under section 654 if they are part of the same course of criminal conduct and are committed with the same intent and objective. (*People v. Capistrano* (2014) 59 Cal.4th 830, 885 (*Capistrano*), overruled on another ground by *People v. Hardy* (2018) 5 Cal.5th 56, 104.) Put differently,

" ' "[w]hether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one." ' " (*Capistrano, supra,* at p. 885.) " 'It is [the] defendant's intent and objective, not the temporal proximity of his offenses, which determine whether the transaction is indivisible.' " (*Id*. at p. 886.)

The determination of a defendant's intent and objective to permit multiple punishments is a factual question for the trial court. (*Capistrano*, *supra*, 59 Cal.4th at p. 886.) "A trial court's express or implied determination that two crimes were separate, involving separate objectives, must be upheld on appeal if supported by substantial evidence." (*People v. Brents* (2012) 53 Cal.4th 599, 618.)

If section 654 applies, the proper procedure is to "stay the sentence on the lesser offense[] while permitting execution of the greater offense consistent with the intent of the sentencing court." (*People v. Thompson* (1989) 209 Cal.App.3d 1075, 1080; accord *People v. Jones*, *supra*, 54 Cal.4th at p. 353.) Courts have held that the preferred remedy when section 654 has been violated and the maximum legal sentence has already been imposed by the trial court is to stay execution of the penalty on the lesser offense rather than remand for resentencing. (*People v. Burns* (1984) 158 Cal.App.3d 1178, 1184.)

The trial court, as stated above, found that the false imprisonment "was conducted at the end of the robbery for a different intent, namely, to enable the escape." The court noted that the victim's confinement in the closet "after the robbery had been completed" indicated a "separate intent" and placed the victim "under separate danger," causing her to believe she was going to be shot and killed in the closet. Salinas-Torres argues that contrary to the trial court's conclusion, the false imprisonment offense (count 4) was part of an indivisible course of conduct with the robbery (count 2).

Salinas-Torres relies on the fact that felony false imprisonment occurs when the victim is compelled by violence or menace " ' " 'to remain where he does not wish to

remain, or to go where he does not wish to go.' " ' " (*People v. Williams* (2017) 7 Cal.App.5th 644, 672 (*Williams*); §§ 236, 237.) He contends that in this case, the felony false imprisonment began immediately after the encounter at the side door, when Salinas-Torres forced the victim at gunpoint to various locations in the house to retrieve cash and jewelry. Although she was ordered into the closet at the end of the ordeal, Salinas-Torres argues that the false imprisonment began much earlier, as the robbers forced her movements to effectuate the robbery. He also points out that only after she exited the closet and later returned to the house did she learn that additional items were taken from the bedroom, like the iPad and computer.

Salinas-Torres contends that even if the false imprisonment began when the victim entered the closet, it was committed with the same intent and objective as the robbery, which was still ongoing. He cites the "continuing" nature of the offense of robbery (*People v. Gomez* (2008) 43 Cal.4th 249, 254 (*Gomez*)), whereby the "taking" of the property "continues until the perpetrator has reached a place of temporary safety with the property" (*id*. at p. 255). Relying on the notion that " 'the robber's escape with the loot [is] considered as important in the commission of the crime as gaining possession of the property' " (*id*. at p. 259), he submits that the victim's false imprisonment in the closet—even if intended to enable the robbers' escape with the stolen property—was part of a course of conduct committed with the single objective of robbing the victim. He argues that this interpretation is consistent with the need to examine a defendant's *entire* course of conduct for a singular intent, regardless of whether "one crime is technically complete before the other commenced" or "the fact that one of the crimes may have been an afterthought . . . ." (*People v. Bauer* (1969) 1 Cal.3d 368, 377.)

Salinas-Torres proposes that the circumstances here are analogous to those in *Williams*, *supra*, 7 Cal.App.5th 644. In relevant part, *Williams* involved three defendants who were convicted of offenses in connection with a series of retail store robberies, including multiple counts of kidnapping to commit another crime, second degree robbery,

kidnapping, and felony false imprisonment. (*Id*. at pp. 651-652.) The defendants argued on appeal that the trial court violated section 654 by imposing sentences for the false imprisonment counts consecutive to the second degree robbery convictions. (*Williams*, *supra*, at p. 694.) The Court of Appeal agreed that section 654 barred the consecutive sentences because "the false imprisonment and the robberies of each victim in counts 2, 7, 10, 13, 16, 18, and 20 were an indivisible course of conduct committed 'pursuant to a single intent and objective,' that is, to rob the victims of the cell phones, cash, and other merchandise in the back rooms of the stores." (*Williams*, *supra*, at p. 695.) The court cited several examples in which the defendants ordered employees to lie facedown in a backroom and count to 100 while they took merchandise and cash from the store. (*Ibid*.)

Salinas-Torres also seeks to distinguish *People v*. *Foster* (1988) 201 Cal.App.3d 20 (*Foster*), in which the court upheld the imposition of consecutive sentences on three counts of false imprisonment in connection with the robbery of a convenience store. (*Id.* at pp. 27-28.) Wielding a knife and a tire iron, the defendants in *Foster* obtained the store's cash-on-hand, then forced an employee and two bystanders into the store cooler and blocked their exit by wedging a hand cart against the door. (*Id*. at pp. 23, 27.) The victims escaped after the robbers left. (*Ibid*.) On appeal, the court rejected the contention that the false imprisonment in the cooler was incidental to the robbery and thus subject to section 654. (*Foster, supra,* at pp. 23, 27.) It explained that "[t]he imprisonment of the victims occurred *after* the robbers had obtained all of the money, and therefore was not necessary or incidental to committing the robbery." (*Id.* at p. 27.) It cited the potential danger of locking the victims in the store cooler as "analogous to a needless or vicious assault committed after a robbery, which has long been held separately punishable and distinguishable from an assault which is merely incidental to robbery." (*Id*. at pp. 27-28.) It also noted that "each false imprisonment count was punishable as a crime of violence against a separate individual." (*Id*. at p. 28.)

The Attorney General responds that unlike in *Williams*, the false imprisonment was not incidental to the robbery but was an independent criminal act with a distinct objective. The Attorney General points out that it was *after* the victim delivered her property to Salinas-Torres that he led her downstairs at gunpoint and ordered her into the closet. On these facts, the Attorney General argues that the trial court reasonably determined that the record demonstrated multiple criminal intents and did not bar multiple punishment.

There is no question that Salinas-Torres extended the victim's terror by ordering her into the closet while armed, and closing the door. She remained in a dark and confined space for about 10 minutes, afraid that she would be shot and uncertain if she could leave. Given the victim's fear and the possibility that she would suffer more egregiously as a result, we find the record in this respect provided substantial evidence for the trial court's finding that the act placed the victim "under separate danger." The record also supported the trial court's finding that Salinas-Torres's intent in forcing the victim into the closet was to enable the perpetrators' escape.[7] But it is less clear whether substantial evidence supported the trial court's conclusion that the false imprisonment occurred "after the robbery had been completed" and thus indicated a "separate intent," precluding the application of section 654.

"False imprisonment is the unlawful violation of the personal liberty of another." (§ 236; *People v. Reed* (2000) 78 Cal.App.4th 274, 280.) It is a felony when effected by " 'violence' " or " 'menace' " within the meaning of section 237—" 'violence' " meaning the exercise of more physical force than reasonably necessary to effectuate the restraint of liberty, and " 'menace' " meaning the threat of harm, whether express or implied. (*Reed, supra,* at p. 280.) At the heart of the offense is "the restraint of a person's *freedom*

[7] According to the probation report, Salinas-Torres admitted as much, telling the officer that he " 'put her [the victim] in the closet so we could get away.' "

*of movement . . . .*" (*Ibid*.) A violation thus occurs, as the court in *Williams* observed, " 'when "the victim is 'compelled to remain where he does not wish to remain, or to go where he does not wish to go.' " ' " (*Williams*, *supra*, 7 Cal.App.5th at p. 672, quoting *Reed*, *supra*, at p. 280.)

We find nothing in the record or the charging documents that limits the false imprisonment to the final act of placing the victim in the closet. To the contrary, the "violation of [her] personal liberty"—which Salinas-Torres effected by both violence and menace (§§ 236, 237)—began after the victim's assault at the side door with her forced movement into the kitchen and through the house and culminated in her placement in the closet to aid the codefendants' escape. This differentiates the circumstances here from those in *Foster*, where the convenience store employee "turned over all the money" from a cash register, a cigar box, and a desk drawer to the robbers, who then ordered the employee and two bystanders into the store cooler. (*Foster*, *supra*, 201 Cal.App.3d at p. 27.) Another notable difference from *Foster* is that each false imprisonment count in that case "was punishable as a crime of violence against a separate individual." (*Id*. at p. 28.) The exception wherein section 654 does not bar separate punishment when an act of violence is committed against multiple victims (*Foster*, *supra*, at p. 28; see *People v. Newman* (2015) 238 Cal.App.4th 103, 113-114) is inapplicable here because the victim was the only victim.

Because the victim's false imprisonment was synchronous with the robbery and enabled the codefendants to obtain items secreted in the upstairs bedroom and to escape with the victim's property, we find it more relatable to *Williams*. A pertinent example from *Williams* is that the defendants "ran into the store, ordered [the victim] to lie facedown on the floor, then made him get up and pushed him to the back room where they made him open boxes of merchandise and then again commanded him to lie facedown and count to 100." (*Williams*, *supra*, 7 Cal.App.5th at p. 673.) Another time, the defendants "grabbed [the victim]'s collar and shoved him to the back room, where

they made him kneel down, and one held his collar while the others took merchandise from the cage. They then told [the victim] to lie facedown and count to 100, and were gone by the time he finished." (*Id*. at p. 673.) Yet another time, the defendants pushed two victims to the break room, "made both lie down on their faces, made [one victim] get up to open the vault, stole merchandise, and then forced him back down to the floor facedown and made him count to 100 while they left the store." (*Id*. at p. 674.)

The victim's forced movements throughout the house under threat of violence—while following directions to give Salinas-Torres her money and jewelry—are not discernably different from *Williams*, given that the robbers forced the victims' movements while gathering the " 'loot' " and restrained the victims while they escaped. (*Williams*, *supra*, 7 Cal.App.5th at p. 670.)

Even if we were to look solely to the victim's placement in the closet as the basis for the false imprisonment conviction, we are not persuaded that Salinas-Torres can be separately punished for that act. The trial court found that the false imprisonment "was conducted at the end of the robbery for a different intent, namely, to enable the escape." This assessment fails to account for what courts have described as the continuing nature of robbery. (See *Gomez*, *supra*, 43 Cal.4th at p. 256.) In *Gomez*, the California Supreme Court considered at what "temporal point" certain aggravating elements, like the use of force or fear and the taking of property from the victim, elevate larceny to robbery. (*Id*. at p. 254.) The court reasoned that because a theft continues until the perpetrator has reached a place of temporary safety with the property, the aggravating elements of robbery can be satisfied at any point during the taking, including during the asportation phase. (*Id*. at pp. 261-262.) It concluded that "[d]ecades of case law have made clear

that robbery in California is a continuing offense, the 'taking' comprising asportation as well as caption."[8] (*Gomez*, *supra*, at p. 262.)

We recognize that *Gomez* does not concern the application of section 654. But to the extent it reaffirms the principle that robbery is a continuing offense (*Gomez*, *supra*, 43 Cal.4th at pp. 255-256, 262), we find it relevant to the determination of whether the victim's placement in the closet was incidental to the robbery. *Gomez* teaches that while "the slightest movement" of stolen property may constitute asportation, "the theft continues until the perpetrator has reached a place of temporary safety with the property." (*Id*. at p. 255.) Here, Salinas-Torres used his initial assault with the gun and the continuous threat of violence to compel the victim's movements through the house and ultimately into the closet so that he and the codefendants could escape with the stolen property. Under *Gomez*, we believe the escape was not a separate course of conduct from the robbery. "In robbery, the elements of larceny are intertwined with the aggravating elements to make up the more serious offense. . . . [R]obbery, like larceny, is a continuing offense. All the elements must be satisfied before the crime is completed." (*Id*. at p. 254.)

In sum, we conclude that the victim's false imprisonment in the closet was part and parcel of a single course of conduct, beginning when Salinas-Torres ordered her into the kitchen at gunpoint and controlled her movements in the house, and ending when he left her in the closet and carried away her property. Neither the victim's extended terror during her time in the closet, nor Salinas-Torres's intent to escape during that time with the stolen loot, reveals a separate objective or intent from that of robbing the victim of her cash and jewelry. (See *Williams*, *supra*, 7 Cal.App.5th at p. 695; cf. *Capistrano*,

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[8] " 'Taking' " in larceny "has two aspects: (1) achieving possession of the property, known as 'caption,' and (2) carrying the property away, or 'asportation.' " (*Gomez*, *supra*, 43 Cal.4th at p. 255.)

*supra,* 59 Cal.4th at p. 887 [holding that the defendant harbored separate objectives in the carjacking and home invasion robbery of the victims, where he "could have" completed the carjacking "at the initial point of contact" but instead had "another, distinct purpose—to rob (and commit other crimes) inside the victims' homes"].)

Accordingly, the sentence for the false imprisonment conviction on count 4 must be stayed pursuant to section 654.

### B. THE 10-YEAR PROTECTIVE ORDER WAS UNAUTHORIZED

At the end of the sentencing hearing, the trial court remarked that there was the "final matter" of a protective order in the case, which was set to expire. The court asked, "[i]s there a request to continue the protective order in the robbery case?" to which the prosecutor responded, "should we just put an order just to ten years at this point?" The trial court then stated, "All right. I'll extend—I'll enter a new order from today, a ten-year protective order given the offense, no contact with the victim in this case." The abstract of judgment reflects the protective order in line 13, "Other orders" as "DVPO mod, exp 11/16/27 no contact."

Salinas-Torres contends that the protective order imposed at sentencing was unauthorized. He suggests that its only possible basis would have been section 136.2, which "authorizes any court with jurisdiction over a criminal matter which has a 'good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur,' to issue a restraining order." (*People v. Stone* (2004) 123 Cal.App.4th 153, 158-159, quoting § 136.2, subd. (a)(1).) In *Stone,* the court construed section 136.2 in relevant part as authorizing restraining orders that are "limited to the pendency of the criminal action in which they are issued . . . ." (*Stone, supra,* at p. 159.) The court explained that in contrast with the authorizing statute for a civil restraining order, section 136.2 "is aimed at protecting only 'victim[s] or witness[es],' an indication of its limited nature and focus on preserving the integrity of the administration

of criminal court proceedings and protecting those participating in them." (*Stone*, *supra*, at p. 159.)

Salinas-Torres argues based on the reasoning of *Stone* that the trial court was not authorized under section 136.2 to impose a protective order beyond his sentencing hearing. He further argues that the trial court could not impose the protective order pursuant to the subdivision of section 136.2 that authorizes a protective order of up to 10 years for "cases in which a criminal defendant has been convicted of a crime involving domestic violence" as defined in specified sections of the Family Code and Penal Code (§ 136.2, subd. (i)(1)), because he was not convicted of any of those crimes.

The Attorney General concedes that the protective order was imposed without an applicable statutory basis and joins the request to strike the order. We find no hint of the statutory basis for the 10-year protective order in the record and accept the Attorney General's concession. We also find that to the extent that the trial court may have relied on section 136.2 for authorization to impose the protective order, such reliance was improper.

Courts since *Stone* have construed section 136.2, subdivision (a) to authorize imposition of protective orders only during the pendency of the criminal action. (See *People v. Selga* (2008) 162 Cal.App.4th 113, 118; *People v. Beckemeyer* (2015) 238 Cal.App.4th 461, 465.) This means that "once the defendant is found guilty and sentenced, the court's authority to issue a protective order under section 136.2, subdivision (a) generally ceases." (*Beckemeyer*, *supra*, at p. 465.) Although the Legislature in 2011 amended the statutory scheme to add subdivision (i)(2), which permits a 10-year postconviction protective order in cases involving conviction of a domestic violence offense (*Beckemeyer*, *supra*, at p. 465; § 136.2, subd. (i)(2)), Salinas-Torres is correct that his convictions in this case do not qualify. (See *Beckemeyer*, *supra*, at p. 466 [defining who may qualify as a " 'victim' " within the meaning of the statute when the crime qualifies as a " 'domestic violence' " crime].)

We conclude that the 10-year protective order imposed at sentencing must be stricken.

## III. DISPOSITION

The judgment is modified to stay the sentence for false imprisonment (count 4) pursuant to Penal Code section 654, and to strike the 10-year protective order. The trial court is directed to prepare and forward to the Department of Corrections and Rehabilitation a certified copy of an amended abstract of judgment reflecting this modification.

As modified, the judgment is affirmed.

Premo, J.

WE CONCUR:

Greenwood, P.J.

Elia, J.

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